

CODE OF JUDICIAL ETHICS
PROPOSED AMENDMENTS TO CANON 3E

E. Disqualification.

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.

(2)- In all trial court proceedings, a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

(3)- An appellate justice shall disqualify himself or herself in any proceeding if for any reason: (i) the justice believes his or her recusal would further the interest of justice; or (ii) the justice substantially doubts his or her capacity to be impartial; or (iii) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial. Disqualification is required in the following instances:

(a) The appellate justice has appeared or otherwise served as a lawyer in the pending matter, or has appeared or served as a lawyer in any other matter involving any of the same parties if that other matter related to the same contested issues of fact and law as the present matter.

(b) Within the last two years, (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law.

(c)- The appellate justice represented a public officer or entity -and personally advised or in any way represented such officer or entity concerning the factual or legal issues in the present proceeding in which the public officer or entity now appears.

(d) -The appellate justice, or his or her spouse, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational,

religious, charitable, fraternal or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary interests and those of his or her spouse and of minor children living in the household.

(e) The justice or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse thereof, is a party or an officer, director or trustee of a party to the proceeding, or a lawyer or spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the justice or of the justice's spouse, or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court, (ii) has a personal knowledge of disputed evidentiary facts concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a party's lawyer. The justice's spouse or a person within the third degree of relationship to the justice or his or her spouse, or the person's spouse, was a witness in the proceeding.

(g) A temporary or permanent physical impairment renders the judge unable properly to perceive the evidence or conduct the proceedings.

COMMENTARY

Canon 3(E)(1) sets forth the general duty to disqualify applicable to a judge of any court. Sources for determining when **recusal or disqualification** is appropriate may include the applicable provisions of the Code of Civil Procedure, other provisions of the Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar Association's Model Code of Judicial Conduct, and related case law.

The introductory paragraph to Canon 3E(3) sets forth the general standards for recusal of an appellate justice. The term "appellate justice" includes justices of both the Courts of Appeal and the Supreme Court. Generally, the provisions concerning disqualification of an appellate justice are intended to assist justices in determining whether recusal is appropriate and to inform the public why recusal may occur.

[The second paragraph to the commentary remains the same.]